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Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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This issue contains

T.D. 79–165 through 79–171
C.A.D. 1226
International Trade Commission
Erratum

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 79-164)

Foreign Currencies—Daily Rates for Countries not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruziero:	
May 14–17, 1979	$0.040350
May 18, 1979	.040550
May 21–25, 1979	.040550
People's Republic of China yuan:	
May 14–18, 1979	$0.628259
May 21–25, 1979	.625743
Hong Kong dollar:	
May 14, 1979	$0.198393
May 15, 1979	.198314
May 16, 1979	.197941
May 17, 1979	.197746
May 18, 1979	.197922
May 21, 1979	.197668
May 22, 1979	.197531
May 23–24, 1979	.197433
May 25, 1979	.197044
Iran rial:	
May 14–18, 1979	$0.013975
May 21–23, 1979	:013975
May 24–25, 1979	:013150

Philippines peso:	
May 14, 1979	$0.1370
May 15–18, 1979	.1365
May 21–25, 1979	.1365
Singapore dollar:	
May 14, 1979	$0.453926
May 15, 1979	.453515
May 16, 1979	.453721
May 17, 1979	.453823
May 18, 1979	.453309
May 21, 1979	.452899
May 22, 1979	.452694
May 23, 1979	.452489
May 24, 1979	.453515
May 25, 1979	.453412
Thailand baht (tical):	
May 14–18, 1979	$0.0490
May 21–24, 1979	.0490
May 25, 1979	.048850

(LIQ–3–O:D:E)

Date: June 5, 1979.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 79–165)

Bonds

Discontinuance of consolidated aircraft bond (air carrier blanket bond), Customs form 7605

The following consolidated aircraft bond has been discontinued as shown below.

Dated: June 7, 1979.

Name of principal and surety	Date term commences	Date of approval	Filed with area director of Customs; amount
Overseas National Airways, Inc., John F. Kennedy Airport, Jamaica, NY; Peerless Ins. Co. D 9/16/78	Oct. 29, 1975	Dec. 19, 1975	J. F. K. Airport; $100,000

The foregoing principal has been designated as a carrier of bonded merchandise.

BON-3-01

DONALD W. LEWIS
(For Leonard Lehman, *Assistant Commissioner, Regulations and Rulings*),

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(T.D. 79-166)

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

PART 153—ANTIDUMPING

Certain Carbon Steel Plate From Taiwan

AGENCY: U.S. Treasury Department.

ACTION: Finding of dumping.

SUMMARY: This notice is to inform the public that investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the U.S. International Trade Commission, respectively, have resulted in a determination that carbon steel plate from Taiwan produced by China Steel Corp. is being sold at less than fair value and that these sales are injuring an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping duties.

EFFECTIVE DATE: June 13, 1979.

FOR FURTHER INFORMATION CONTACT: David Mueller, Operations Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5492.

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as the act), gives the Secretary of the Treasury responsibility for determining whether imported merchandise is being sold at less than fair value. Pursuant to this authority, the Secretary has determined that carbon steel plate from Taiwan produced by China Steel Corp. is being sold at less than fair value within the meaning of section 201(a) of the act (19 U.S.C. 160(a)). (Published in the Federal Register of Feb. 14, 1979 (44 F.R. 9639).)

Section 201(a) of the act (19 U.S.C. 160(a)) gives the U.S. International Trade Commission responsibility for determining whether, by reason of such sales at less than fair value, a domestic industry is being or is likely to be injured. The Commission has determined, and on May 14, 1979, it notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of carbon steel plate from Taiwan that is being sold at less than fair value within the meaning of the act. Notice of this determination was published in the Federal Register of May 22, 1979 (44 F.R. 29734).

On behalf of the Secretary of the Treasury, I hereby make public these determinations which constitute a finding of dumping with respect to carbon steel plate from Taiwan produced by China Steel Corp.

For purposes of this notice, the term "carbon steel plate" refers to hot rolled carbon steel plate, not coated or plated with metal and not clad, other than black plate, not alloyed, and other than in coils. This merchandise is classified under item 608.8415 of the Tariff Schedules of the United States Annotated.

Accordingly, section 153.46 of the Customs Regulations (19 CFR 153.46) is being amended by adding the following to the list of findings of dumping currently in effect:

Merchandise	Country	Treasury Decision
Carbon steel plate produced by China Steel Corp..	Taiwan	79166

(Sec. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173).)

Dated: June 7, 1979

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, June 13, 1979, 44 F.R. 33877]

(T.D. 79-167)

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

PART 153—ANTIDUMPING

Sugar From Belgium, France, and the Federal Republic of Germany

AGENCY: U.S. Treasury Department.

ACTION: Finding of dumping.

SUMMARY: This notice is to inform the public that investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the U.S. International Trade Commission, respectively, have resulted in a determination that sugar from Belgium, France, and the Federal Republic of Germany is being sold at less than fair value and that these sales are injuring an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping duties.

EFFECTIVE DATE: June 13, 1979.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Operations Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–5492.

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as the act), gives the Secretary of the Treasury responsibility for determining whether imported merchandise is being sold at less then fair value. Pursuant to this authority, the Secretary has determined that sugar from Belgium, France, and the Federal Republic of Germany is being sold at less than fair value within the meaning of section 201(a) of the act (19 U.S.C. 160(a)). (Published in the Federal Register of February 12, 1979 (44 F.R. 8949).)

Section 201(a) of the act (19 U.S.C. 160(a)) gives the U.S. International Trade Commission responsibility for determining whether, by reason of such sales at less than fair value, a domestic industry is being or is likely to be injured. The Commission has determined, and on May 16, 1979, it notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of sugar from Belgium, France, and the Federal Republic of Germany that is being sold at less than fair value within the meaning of the act. Notice of this determination was published in the Federal Register of May 23, 1979 (44 F.R. 29992).

On behalf of the Secretary of the Treasury, I hereby make public these determinations which constitute a finding of dumping with respect to sugar from Belgium, France, and the Federal Republic of Germany.

For purposes of this notice, the term "sugar" refers to raw and refined sugar provided for in items Nos. 155.20 and 155.30 of the Tariff Schedules of the United States (TSUS).

Accordingly, section 153.46 of the Customs Regulations (19 CFR 153.46) is being amended by adding the following to the list of findings of dumping currently in effect:

Merchandise	Country	Treasury Decision
Sugar	Belgium, France, and the Federal Republic of Germany	79-167

(Sec. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 178).)
Dated: June 6, 1979.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, June 13, 1979, 44 F.R. 33878]

(T.D. 79-168)

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

PART 153—ANTIDUMPING

Viscose Rayon Staple Fiber From Italy

AGENCY: U.S. Treasury Department.

ACTION: Finding of dumping.

SUMMARY: This notice is to inform the public that separate investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the U.S. International Trade Commission, respectively, have resulted in determinations that viscose rayon staple fiber from Italy is being sold at less than fair value and that these sales are injuring an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping duties.

EFFECTIVE DATE: June 13, 1979.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5492.

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as the act), gives the Secretary of the Treasury responsibility for the determination of sales at less than fair value. Pursuant to this authority, the Secretary has determined that viscose rayon staple fiber from Italy is being sold at less than fair value within the meaning of section 201(a) of the act (19 U.S.C. 160(a)). (Published in the Federal Register of Feb. 27, 1979, 44 F.R. 11137.)

Section 201(a) of the act (19 U.S.C. 160(a)) gives the U.S. International Trade Commission responsibility for determining whether, by reason of such sales at less than fair value, a domestic industry is being or is likely to be injured. The Commission has determined, and on May 22, 1979, it notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of viscose rayon staple fiber from Italy that is being sold at less than fair value within the meaning of the act. Notice of this determination was published in the Federal Register of May 31, 1979 (44 F.R. 31327).

On behalf of the Secretary of the Treasury, I hereby make public these determinations, which constitute a finding of dumping with respect to viscose rayon staple fiber from Italy.

For purposes of this notice, the term "viscose rayon staple fiber" means viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed, and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments). This term includes both commodity fiber and specialty fiber.

Accordingly, section 153.46 of the Customs Regulations (19 CFR 153.46) is being amended by adding the following to the list of findings of dumping currently in effect.

Merchandise	Country	Treasury Decision
Viscose rayon staple fiber	Italy	

(Sec. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173).)

Dated: June 1, 1979.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in Federal Register, June 13, 1979, 44 F.R. 33878]

294-263—79——2

(T.D. 79-169)

Changes in the Customs Field Organization; Section 101.3, Customs Regulations, Amended

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 101—GENERAL PROVISIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document changes the field organization of the Customs Service by: (1) Extending the existing port limits of the Puget Sound, Wash., port of entry to include Renton Municipal Airport and Seaplane Base on Lake Washington; (2) extending the existing port limits of the Buffalo-Niagara Falls, N.Y., port of entry to include the townships of Porter, Lewiston, and Wheatfield, located in Niagara County, N.Y.; (3) extending the existing port limits of the Providence, R.I., port of entry to include the townships of East Greenwich and North Kingstown, R.I.; and (4) abolishing the present port of entry of South Bend-Raymond, Wash., and extending the existing port limits of the port of entry of Aberdeen, Wash., to include the territory currently encompassed by the port of South Bend-Raymond.

EFFECTIVE DATE: June 16, 1979.

FOR FURTHER INFORMATION CONTACT: Robert Schenarts, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-8151.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, on December 14, 1978, Customs published a notice in the Federal Register (43 F.R. 58383), proposing to make the following changes in its field organization:

1. To extend the existing port limits of the Pugent Sound, Wash., port of entry (region VIII), to include Renton Municipal Airport and Seaplane Base on Lake Washington.

2. To extend the existing port limits of the Buffalo-Niagara Falls, N.Y., port of entry (region I), to include the townships of Porter, Lewiston, and Wheatfield, located in Niagara County, N.Y.

3. To establish a combined port of entry of Owensboro-Paducah, Ky. (region IX), to include the corporate limits of both cities and the connecting highway known as Green River Parkway, south from Owensboro to the junction of the Western Kentucky Parkway, west to U.S. Highway 62, and west to Paducah, all in the State of Kentucky.

4. To extend the existing port limits of the Providence, R.I., port of entry (region I), to include the townships of East Greenwich and North Kingstown, R.I.

5. To abolish the present port of entry of South Bend-Raymond, Wash. (region VIII), and extend the existing port limits of the Aberdeen, Wash., port of entry to include the territory currently encompassed by the port of South Bend-Raymond.

COMMENTS

Interested parties were given until February 12, 1979, to submit comments regarding these proposed changes. No comments were received. After review of the proposal, it has been determined that to expedite the extensions of the existing Customs ports of entry, it would be advisable to separate the proposal to establish the new combined port of entry of Owensboro-Paducah, Ky., from the other proposed changes. Establishment of the Owensboro-Paducah, Ky., combined port of entry will be the subject of a separate document published in the Federal Register.

CHANGES IN THE CUSTOMS FIELD ORGANIZATION

Under the authority vested in the President by section 1 of the act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–53 comp., ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (44 F.R. 31057), the following changes in the Customs field organization are adopted:

PUGET SOUND, WASH.

The limits of the Puget Sound, Wash., port of entry (region VIII), are extended to include Renton Municipal Airport and Seaplane Base. As extended, the geographical boundaries of the Puget Sound, Wash., port of entry include the following:

> The ports of Seattle, Anacortes, Bellingham, Everett, Friday Harbor, Kenmore Air Harbor (secs, 1, 2, 12, and 13 of Township 26 north, range 3 east, west meridian, and secs. 1 to 18, inclusive, of township 26 north, range 4 east, west meridian), Neah Bay, Olympia, Port Angeles, Port Townsend; Renton Municipal Airport and Seaplane Base (secs. 7 and 18, township 23 north, range 5 east, west meridian); and the territory in Tacoma beginning at the intersection of the westernmost city limits of Tacoma and The

Narrows and proceeding in an easterly, then southerly, then easterly direction along the city limits of Tacoma to its intersection with Pacific Highway (U.S. Route 99), then proceeding in a southerly direction along Pacific Highway to its intersection with Union Avenue Extended and continuing in a southerly direction along Union Avenue Extended to its intersection with the northwest corner of McChord Air Force Base, then proceeding along the northern, then western, then southern boundary of McChord Air Force Base to its intersection, just west of Lake Mondress, with the northern boundary of the Fort Lewis Military Reservation, then proceeding in an easterly direction along the northern boundary of the Fort Lewis Military Reservation to its intersection with Pacific Avenue, then proceeding in a southerly direction along Pacific Avenue to its intersection with National Park Highway, then proceeding in a southeasterly direction along National Park Highway to its intersection with 224th Street, East, then proceeding in an easterly direction along 224th Street, East, to its intersection with Meridian Street, South, then proceeding in a northerly direction along Meridian Street to the northern boundary of Pierce County, then proceeding in a westerly direction along the northern boundary of Pierce County to its intersection with Puget Sound, then proceeding in a generally southwesterly direction along the banks of the East Passage of Puget Sound, Commencement Bay, and The Narrows to the point of intersection with the westernmost city limits of Tacoma, including all points and places on the southern boundary of the Juan de Fuca Strait from the eastern port limits of Neah Bay to the western port limits of Port Townsend, all points and places on the western boundary of Puget Sound, including Hood Canal, from the port limits of Port Townsend to the northern port limits of Olympia, all points and places on the southern boundary of Puget Sound from the port limits of Olympia to the western port limits of Tacoma, and all points and places on the eastern boundary of Puget Sound and contiguous waters from the port limits of Tacoma north to the southern port limits of Bellingham, all in the State of Washington.

BUFFALO-NIAGARA FALLS, N.Y.

The limits of the Buffalo-Niagara Falls, N.Y., port of entry (region I), are extended to include the townships of Porter, Lewiston, and Wheatfield, located in Niagara County, N.Y. As extended, the geographical boundaries of the Buffalo-Niagara Falls, N.Y., port of entry include the following:

All the territory within the corporate limits of the cities of Buffalo, Niagara Falls, Lewiston, Lackawanna, Tonawanda, and North Tonawanda, and the townships of Grand Island, Tonawanda, Amherst, Cheektowaga, Hamburg, West Seneca, and Orchard Park in the county of Erie, and the townships of Porter, Lewiston, Wheatfield, and Niagara, in the county of Niagara, all in the State of New York.

PROVIDENCE, R.I.

The limits of the Providence, R.I., port of entry (region I), are extended to include the townships of East Greenwich and North Kingstown, R.I. As extended, the geographical boundaries of the Providence, R.I., port of entry include the following:

> All the territory within the corporate limits of the city of Providence and the townships of Central Falls, Cranston, East Providence, Barrington, Pawtucket, Warwick, Woonsocket, Cumberland, Johnston, North Smithfield, Smithfield, Lincoln, West Warwick, East Greenwich, and North Kingstown, all in the State of Rhode Island.

SOUTH BEND-RAYMOND AND ABERDEEN, WASH.

The South Bend-Raymond, Wash., port of entry (region VIII), is abolished. The limits of the Aberdeen, Wash., port of entry (region VIII), are extended to include the territory currently encompassed by the port of South Bend-Raymond. As extended, the geographical boundaries of the Aberdeen port of entry include the following:

> The corporate city limits of Aberdeen, Hoquiam, and Cosmopolis; all the territory within the corporate limits of South Bend and Raymond; all points on the Willapa River lying between the corporate limits of South Bend and Raymond; and that part of U.S. Highway 101 which connects the city limits of Aberdeen, Hoquiam, and Cosmopolis to the corporate limits of South Bend and Raymond, all in the State of Washington.

AMENDMENTS TO THE REGULATIONS

To reflect these changes, the table in section 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by:

1. Substituting "T.D. 79–169." for "T.D. 78–241." in the column headed "Ports of entry" in the Seattle, Wash., Customs district (region VIII).

2. Substituting "(T.D. 79–169)." for "(T.D. 56512)." in the column headed "Ports of entry" in the Buffalo, N.Y., Customs district (region I).

3. Substituting "T.D. 79–169." for "T.D. 67–3." in the column headed "Ports of entry" in the Providence, R.I., Customs district (region I).

4. Deleting "South Bend-Raymond (T.D. 53576)." from the column headed "Ports of entry" in the Seattle, Wash., Customs district (region VIII).

5. Substituting "T.D. 79–169." for "T.D. 56229." in the reference to "Aberdeen, including territory described in * * *" in the column headed "Ports of entry" in the Seattle, Wash., Customs district (region VIII).

INAPPLICABILITY OF EXECUTIVE ORDER 12044

This document is not subject to the Treasury Department directive (43 F.R. 52120) implementing Executive Order 12044, "Improving Government Regulations," because the regulation was in the process of development before May 22, 1978.

DRAFTING INFORMATION

The principal author of this document was Lawrence P. Dunham, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: May 29, 1979.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register, June 15, 1979, 44 F.R. 34478]

(T.D. 79–170)

Foreign Currencies—Daily Rates for Countries not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruziero:	
May 28–29, 1979	$0.040550
May 30, 1979	Holiday
May 31, 1979	.0390
June 1, 1979	.0389
People's Republic of China yuan:	
May 28–29, 1979	$0.625743
May 30, 1979	Holiday
May 31, 1979	.623869
June 1, 1979	.626370

Hong Kong dollar:	
May 28, 1979	$0.196541
May 29, 1979	.196078
May 30, 1979	Holiday
May 31, 1979	.196425
June 1, 1979	.196271
Iran rial:	
May 28–29, 1979	$0.013150
May 30, 1979	Holiday
May 31, 1979	.013150
June 1, 1979	.013150
Philippines peso:	
May 28–29, 1979	$0.1365
May 30, 1979	Holiday
May 31, 1979	.1365
June 1, 1979	.1365
Singapore dollar:	
May 28, 1979	$0.453309
May 29, 1979	.448430
May 30, 1979	Holiday
May 31, 1979	.454030
June 1, 1979	.454215
Thailand baht (tical):	
May 28–29, 1979	$0.0490
May 30, 1979	Holiday
May 31, 1979	.0490
June 1, 1979	.0490

(LIQ-3-O:D:E)

Date: June 11, 1979

BEN L. IRVIN,
Acting Director,
Duty Assessment Division

(T.D. 79-171)

Foreign Currencies—Variances From Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New

York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 79–113 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Denmark krone:	
May 29, 1979	$0. 181752
May 30, 1979	Holiday
May 31, 1979	(*)
June 1, 1979	.180750

*No variance this date. Use quarterly rate.

(LIQ–3–O:D:E)

Date: June 11, 1979.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

Decisions of the U.S. Court of Customs and Patent Appeals

(C.A.D. 1226)

THE UNITED STATES v. HUGO STINNES STEEL & METALS CO., No. 78–16 (— F. 2d —)

1. Presidential Proclamation

Customs Court judgment, 80 Cust. Ct. 175, C.D. 4753, 453 F. Supp. 94 (1978), granting appellee's motion for summary judgment and denying appellant's cross-motion holding that the merchandise in question, 415 coils of cold-rolled steel sheets, was "exported to the United States before 12:01 a.m., August 16, 1971," and is accordingly exempt from the 10-percent supplemental duty provided by Presidential Proclamation 4074 within the intent of additional duty order No. 3, affirmed.

2. Id.—Statutes—TSUS

No logical basis for distinguishing between a statutory rate of duty and the present proclaimed rate of duty incorporated into the Tariff Schedules of the United States (TSUS), and Customs Court was correct in concluding that Presidential Proclamation 4074 and additional duty order No. 3 became part of the TSUS.

3. Id.—Judicial Review

Review procedures of 28 U.S.C. 2637(a) are as applicable to a civil action contesting imposition of the 10-percent surcharge of Presidential Proclamation 4074 as they would be to an action challenging imposition of the duty rate under the original classification under the TSUS. The Customs Court properly considered the depositions and exhibits offered by appellee in support of its motion for summary judgment.

4. Intent—Exportation

Customs Court did not err by considering that proof of intent of the importer to transship steel coils from Japan to Belgium to the United States and the contingency of a diversion of the merchandise are closely related but not separate and individual elements of proof of exportation to the United States.

294–263—79——3

U.S. Court of Customs and Patent Appeals, June 7, 1979
Appeal from U.S. Customs Court, C.D. 4753

[Affirmed.]

Barbara Allen Babcock, Assistant Attorney General, *David M. Cohen*, Acting Director, *Joseph I. Liebbman*, *Saul Davis* for the United States.
Patrick D. Gill, *Rode & Qualey*, attorneys of record, for appellee.

[Oral argument on Feb. 5, 1979, by David M. Cohen for appellant and by Patrick D. Gill for appellee.]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE,* and MILLER, *Associate Judges*.

RICH, *Judge*.

[1] This appeal is from a judgment of the Customs Court, 80 Cust. Ct. 175, C.D. 4753, 453 F. Supp. 94 (1978), granting appellee's motion for summary judgment and denying appellant's cross-motion, holding that the merchandise in question, 415 coils of cold-rolled steel sheets, was "exported to the United States before 12:01 a.m., August 16, 1971," and is accordingly exempt from the 10-percent supplemental duty provided by Presidential Proclamation 4074 within the intent of additional duty order No. 3. We affirm.

Presidential Action

The economic crisis of 1971 that spawned the modification of duties by President Nixon is presented in this Court's opinion in *United States* v. *Yoshida International, Inc.*, 63 CCPA 15, 526 F. 2d 560, C.A.D. 1160 (1975), which considered the validity of Proclamation 4074,[1] the application of which is here in question. Basically, the proclamation imposed a supplemental duty to help quell an increasingly unfavorable balance of payments. In pertinent part, it provided:

> B. (2) * * * Such supplemental duty [amounting to 10 percent ad valorem] shall be imposed on all dutiable articles imported into the customs territory of the United States from outside thereof, which are entered, or withdrawn from warehouse, for consumption after 12:01 a.m., August 16, 1971 * * *.

The President then specifically provided that the supplemental duty would be effected by inclusion of section B, supra, in the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202):

> C. To implement section B of this Proclamation, the following new subpart shall be inserted after subpart B of part 2 of the appendix to the Tariff Schedules of the United States:

*Judge Lane took no part in the decision in this case.

[1] 36 F.R. 15724, 85 Stat. 926 (1971), terminated less than 5 months later by Proclamation 4098, 36 F.R. 24201 (1971).

SUBPART C—TEMPORARY MODIFICATIONS FOR BALANCE OF PAYMENTS PURPOSES

* * * * * * *

Item	Article	Rates of duty	
		1	2
948.00	Articles, except as exempted under headnote 5 of this subpart, which are not free of duty under these schedules and which are the subject of tariff concessions granted by the United States in trade agreements.....	10% ad val. (See headnote 3 of this subpart.)	No change.

Included in the proclamation were headnotes to subpart C explaining that the duty rate under column 1 of item 948.00 would be added to that imposed on the imported article under the appropriate item in schedules 1 through 7 to determine an aggregate rate:

Subpart C headnotes:

1. This subpart contains modifications of the provisions of the tariff schedules proclaimed by the President in Proclamation 4074.

2. *Additional duties imposed.*—The duties provided for in this subpart are *cumulative* duties which apply in addition to the duties otherwise imposed on the articles involved. The provisions for these duties are effective with respect to articles entered on and after 12:01 a.m., August 16, 1971, and shall continue in effect until modified or terminated by the President or by the Secretary of the Treasury (hereinafter referred to as the Secretary) in accordance with headnote 4 of this subpart.

3. *Limitation on additional duties.*—The additional 10 percent rate of duty specified in rate of duty column numbered 1 of item 948.00 shall in no event exceed that rate which, when added to the column numbered 1 rate imposed on the imported article under the appropriate item in schedules 1 through 7 of these schedules, would result in an *aggregated* rate in excess of the rate provided for such article in rate of duty column numbered 2. [Italic ours.]

Continuing, the President authorized the Secretary of the Treasury—"For the purposes of this subpart"—to establish exemptions from the rate of additonal duty, consistent with the purpose of the proclamation:

4. For the purposes of this subpart—

(a) *Delegation of authority to Secretary.*—The Secretary may from time to time take action to reduce, eliminate or reimpose the rate of additional duty herein or to establish exemption therefrom, either generally or with respect to an article which he may specify either generally or as the product of a particular country, if he determines that such action is consistent with safeguarding the balance of payments position of the United States.

Pursuant to this delegation of authority, the Secretary of the Treasury exempted certain articles from the supplemental duty in "Additional Duty Order No. 3," [2] which became headnote 5(h) of subpart C:

> Pursuant to the authority vested in the Secretary of the Treasury by headnote 4(a) subpart C of part 2 of the appendix to the Tariff Schedules of the United States, I hereby determine that it is consistent with safeguarding the balance of payments position of the United States to *establish exemptions* from the additional duty provided for in subpart C as set forth in headnote 5 thereof which I hereby amend to add the following:
>
> > (h) Articles *exported to the United States before 12:01 a.m., August 16, 1971*, provided that any such articles entered for warehouse or placed in foreign trade zone shall be exempt only if withdrawn from warehouse for consumption or entered or withdrawn for consumption from a foreign trade zone under a request properly filed on or before October 1, 1971.
>
> By virtue of the authority vested in the Secretary of the Treasury, including the authority in Reorganization Plan No. 26 of 1950 (3 CFR ch. III), the Commissioner of Customs, with the approval of the Assistant Secretary of the Treasury (Enforcement and Operations) is authorized to prescribe such regulations and issue such instructions as may be necessary to carry out the purposes of this order. [Italic ours.]

This suit is concerned with whether the merchandise was "exported to the United States before 12:01 a.m., August 16, 1971," and whether judicial review of the decision of the Commissioner of Customs on that question should be restricted to the reasonableness of that decision, as determined from the administrative record, or considered under the review procedures of 28 U.S.C. 2637(a) [3] permitting additional evidence.

Facts

The U.S. Customs Service determined that the 10-percent surcharge was applicable on the basis of the following evidence. Information supplied to the Government by appellee indicated that (a) La Métallurgie Liégeoise S.A., a Belgian steel trader, purchased the imported merchandise from Koyo Boeki Co., Ltd., of Japan on a C.I.F. Antwerp basis; (b) appellee Hugo Stinnes Steel & Metals Co. (Hugo Stinnes) purchased the steel coils from La Métallurgie on a C.I.F., free out Antwerp basis; (c) the merchandise was shipped from Japan to Belgium on July 17, 1971, unladen in Antwerp on Septem-

[2] 36 F.R. 17667 (1971).

[3] 28 U.S.C. 2637(a) (1977) (originally enacted as the Customs Courts Act of 1970, Public Law No. 91-271, 84 Stat. 274) reads;

> In any proceeding in the Customs Court, under rules prescribed by the court, the parties and their attorneys shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and all papers admitted or offered as evidence, except as provided in subsection (b) of this section.

ber 3, 1971, stored in a warehouse, shipped from Belgium to the United States on September 25, 1971, and entered at the port of Toledo, Ohio, on November 4, 1971.

In support of its motion for summary judgment, appellee offered additional evidence under 28 U.S.C. 2637(a) consisting of various exhibits and depositions of four witnesses, which was considered by the Customs Court to establish the following facts. In February 1971, Heine Brothers Ltd., an English steel trader, offered La Métallurgie an option to purchase coiled cold-rolled steel sheets to be manufactured in Japan by Nippon Steel Corp. Heine Brothers in turn had been offered the steel from Koyo Boeki. In its attempt to secure buyers for the steel, La Métallurgie contacted appellee Hugo Stinnes within a few days of the Heine Brothers' offer, and made its first offer to sell to Stinnes on February 24, 1971.

After negotiations, on May 5, 1971, appellee placed with La Métallurgie a consolidated order, consisting of six separately numbered orders, for 11,000 metric tons of coiled steel, specifying its origin to be "Nippon Steel Corp., Japan" and its shipment to be from Japan by July 31, 1971, via Antwerp to designated ports in the United States. The six separate orders were numbered 10555, 10556, 10557, 10558, 10559, and 10562, and were to be further distinguished, according to the consolidated order, by color markings and Greek letters to correspond to particular sales to U.S. purchasers. For example, the steel coils in question covered by order number 10555 were to be marked with two red strokes and "Antwerp/Alpha" (Alpha indicating Toledo), while those covered by order 10556 were to be marked with two yellow strokes and "Antwerp/Alpha." Payment was arranged via an irrevocable and transferable letter of credit drawn on appellee's account at the Bank of America in New York on June 10, 1971 for the benefit of La Métallurgie.

Almost simultaneously with the inception of negotiations with La Metallurgie (March–April 1971), Hugo Stinnes contacted certain U.S. customers, including Barsteel, Detroit, a division of U.S. Industries, which was aware that the merchandise was to come from Japan. On May 13, 1971, appellee confirmed Barsteel's order for 4,570 metric tons of the steel coils, with both the description and amount similar to that indicated in order Nos. 10555 and 10556. However, the written agreement with Barsteel did not specify Japan as the country of origin.

Shipping arrangements from Japan to Antwerp were made by Koyo Boeki, the Japanese steel trader. Apparently because Koyo Boeki used a charter carrier from Nagoya, Japan, to Antwerp, the bill of lading reflected that contract and failed to show the ultimate destination to the United States. By early July 1971, before the steel coils had been shipped from Japan, appellee arranged for Neptune,

Belgian Transport & Shipping Co., Ltd., to handle the steel while in Antwerp and for Cast Lines to ship the merchandise to Toledo.

The steel coils in question were shipped from Japan on July 17, 1971, and arrived in Antwerp on or about about September 4, 1971, where they were unladen and maintained in an "in-transit" status. Upon arrival, the merchandise bore the designation "Antwerp/Alpha" and the respective red and yellow markings indicating order Nos. 10555 and 10556. No Belgian customs duties were paid on the merchandise, nor did it leave the pier at any time until laden for transshipment to Toledo. On or about September 25, 1971, the steel coils were laden aboard Cast Lines' vessel, arriving at Toledo on or about October 10, 1971, and entered there on November 4, 1971.

Customs Court

Subsequent to the denial by the Customs Service of appellee's protest to imposition of the 10 percent supplemental duty pursuant to Presidential Proclamation 4074, Hugo Stinnes filed its complaint contending that the Commissioner of Customs had improperly determined that the steel coils had been exported to the United States as of September 25, 1971, the date the merchandise was shipped from Antwerp, after the August 16, 1971, exemption date of the Treasury Secretary's additional duty order No. 3. In its opinion on appellee's motion for summary judgment, the Customs Court noted that "the government has been urging with increased frequency that decisions made by the Secretary of the Treasury and the Commissioner of Customs of the character presently under consideration may be reviewed only with respect to the reasonableness thereof." The court disagreed with the Government, emphasizing that the language of 28 U.S.C. 2637(a) indicates Congress's clear intent to provide extensive judicial review in any proceeding before the Customs Court. Moreover, the court rejected the contention that the instant action should be considered outside the usual framework of cases presented before the court, and characterized the Presidential proclamation and additional duty order No. 3 as a part of the Tariff Schedules of the United States, the legal equivalent of a congressional enactment. Consequently, the court declared appellee to be in the same position as any importer seeking adjudication upon denial of its protest to the imposition of a statutory rate of duty by the Customs Service.

Recognizing the strong presumption of correctness that is attributed to the Commissioner's determination and the burden on appellee to rebut it (28 U.S.C. 2635(a)), the Customs Court examined the basis of the determination. The court concluded that the proof required to show that the steel coils, by reason of their date of exportation from Japan, were within the duty exemption of additional duty

order No. 3 is determined by this court's statement in *United States* v. *National Sugar Refining Co.*, 39 CCPA 96, 101, C.A.D. 470 (1951) that:

> An exportation is [1] a severance of goods from the mass of things belonging to [the country of origin] with [2] the intention of uniting them to the mass of things belonging to some foreign country.

Applying this definition, the Customs Court found that the evidence adduced on the cross-motions overwhelmingly indicated that at the time the steel coils were shipped from Japan on July 17, 1971, appellee intended that they be joined to the mass of goods of the United States and to that of no other country.

To the Government's argument that there existed a significant contingency of diversion of the goods to a port other than Toledo, the court stated that the weight and sufficiency of all of the evidence demonstrated appellee's continuing intention to transship the merchandise. Specifically, the court concluded that the absence of the ultimate destination on the bills of lading covering shipment from Japan to Antwerp was satisfactorily explained because neither Koyo Boeki nor the chartering shippers knew of the transshipment to the United States. It was the intention of appellee to transship rather than the absence of that intent by Koyo Boeki that was controlling, according to the Customs Court.

Similarly, the court disagreed that appellee's right to inspect the steel in Antwerp was persuasive of a substantial possibility of diversion, noting that appellee was merely asserting its rights to assure contract conformity and to determine damage and had no legal right to refuse acceptance or reject the goods. Finally, the court concluded that, contrary to the Government's contention that Hugo Stinnes had not paid for the steel until after its arrival and inspection at Antwerp, appellee paid La Métallurgie as of the June 1971 date that the irrevocable and transferable letter of credit was established for the benefit of La Métallurgie. Appellee had established, said the court, that no credible evidence existed to support a realistic basis for a contingency of diversion sufficient to disturb appellee's intent to transship.

Opinion

The Government argues with great fervor that this case is, contrary to the Customs Court holding, outside the usual framework of a classification or valuation case. Here, so the Government alleges, the additional duty order No. 3 issued by the Secretary of the Treasury "must be viewed as possessing the status of a valid statute." Pursuant to the supposed "statute," i.e., the order, the determination by the Customs Service (and the denial by the Acting Commissioner of Customs of the

appellee's request for reconsideration) that the steel coils were properly classified under item 948.00, TSUS, constituted an *interpretation of a statute*, such "interpretation" being within the delegation of authority expressed in the Secretary's order "to prescribe such *regulations* and issue such *instructions* as may be necessary to carry out the purposes of this order." [4] [Italic ours.]

This case, says the Government, is strictly one of valid exercise of discretionary authority by an administrative agency and its official, and involves only the question of whether the action was contrary to law, arbitrary or capricious, or an abuse of discretion. We are told that the ruling by the Customs Court applying de novo review operates as "a trespass upon the constitutional sphere of influence uniquely within the domain of the executive branch of the Government."

We do not agree with the Government's contention that the Secretary's order must be considered a statute separate and distinct from the TSUS. Indeed, the proclamation itself expressly provides that it be implemented by means of a new subpart that shall be inserted in the TSUS. Only "For the purposes of this subpart" was authority delegated to the Secretary of the Treasury, pursuant to which he issued the order that the Government would have us raise to the status of a unique statute. We decline to do so.

When the President implemented the proclamation by means of the appendix to the tariff schedules, he necessarily submitted application of the surcharge to the same review procedures as a determination based solely on a provision in schedules 1–8. To conclude otherwise would present the anomaly that an importer contesting both classifi-

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[4] In its statement of material facts before the Customs Court, the Government indicated the basis for the determination by the Customs Service applying the 10-percent surcharge of item 948.00 as follows.

> While we have taken note of the Antwerp bills of lading by which the merchandise in question was transshipped to various United States ports, the documents considered in their entirety do not conclusively establish that the merchandise was *destined for the United States at the time of exportation from Japan*, or that the merchandise could not have entered into the commerce of Belgium.
>
> For example, the bills of lading from Japan to Antwerp make no mention of transshipment, and the sales in question were not direct sales from the Japanese manufacturer to the U.S. importers. [Italic ours.]

Upon appellee's request for reconsideration, Acting Commissioner of Customs Rains stated:

> Your letter cited various cases in which the courts have held that merchandise produced in country A but shipped to the United States, by way of country B was, for valuation purposes, the product of country A. However, in this case the country of exportation for valuation purposes is not in issue but, rather, the question is one of establishing the fact of a legal obligation to transship the merchandise in question to the United States at the time it left Japan for purposes of applying the surcharge. While the Belgium bill of lading may be some indication of an intention as of Aug. 9, 1971, to transship the merchandise to the United States, such bill of lading does not constitute a legal obligation to do so.
>
> In the absence of proof that the merchandise was under an absolute legal obligation to be transshipped to the United States, and could not, under any circumstances, have entered the stream of commerce in Belgium or have been transshipped to a country other than the United States, we must affirm our prior conclusion that, for purposes of the surcharge, *the date of exportation to the United States was the date on which the goods were shipped from Belgium*. [Italic ours.]

cation under one part of the TSUS and assessment under another part of the TSUS would be subject to differing review procedures for each of the issues. **[2]** We hold that there is no logical basis for distinguishing between a statutory rate of duty and the present proclaimed rate of duty, and that the Customs Court was correct in concluding that Presidential Proclamation 4074 and additional duty order No. 3 became part of the TSUS.

Our position is supported by the "Tariff Classification Study, Submitting Report," U.S. Tariff Commission (1960), stating in pertinent part, at 12:

> * * * the appendix to the proposed revised tariff schedules is designed for the incorporation of all legislation, proclamations, and administrative actions which, *because of their temporary and collateral nature*, are not assimilable into the main body of the tariff schedules. [*Italic ours.*]

Thus, only because material in the appendix is "temporary and collateral"—and not because it is substantively unique—is such material not incorporated directly into schedules 1–8 of the TSUS. We consider item 948.00 "a proviso, albeit a temporary one, of the original classification" to which the steel coils in question were subject. *Czarnikow-Rionda Co.* v. *United States*, 60 CCPA 6, 8, C.A.D. 1071, 468 F. 2d 211, 214 (1972). **[3]** As such, the review procedures under 28 U.S.C. 2637(a) are as applicable to a civil action contesting imposition of the 10 percent surcharge of Presidential Proclamation 4074 as they would be to an action challenging imposition of the duty rate under the original classification.[5] Therefore, we conclude that the Customs Court properly considered the depositions and exhibits offered by appellee in support of its motion for summary judgment.

We turn now to the history and purpose of additional duty order No. 3. On August 31, 1971, 2 weeks after the effective date of the President's proclamation, Assistant Secretary of the Treasury Rossides issued a memorandum to Secretary of the Treasury Connally describing requests for exemptions based on equity and absence of impact on this country's balance of payments. Assistant Secretary Rossides indicated four areas of significant requests, two being:

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[5] We recognize that the Customs Court expressed its belief that the broad language of 28 U.S.C. 2637(a), supra note 3, contradicts the Government's position that limited scope of review is warranted, and that its opinion has been cited for this proposition in *Michelin Tire Corp.* v. *United States*, 82 Cust. Ct. —, C.D. 76-6, — F. Supp. —, *petition for writs of prohibition and mandamus pending sub nom. United States* v. *Watson*, No. 79-17 (CCPA 1979). We do not rest our decision today on this basis, concluding, as we do, that this case falls within the same procedural framework as classification and apprisement cases. Whether the Customs Court was correct in deciding that review under the procedures of Sec. 2637(a) applies in any proceeding before the Customs Court—including countervailing duty and antidumping cases—is an issue not before us. The question before the Customs Court was simply one of fact under additional duty order No. 3, a part of the TSUS, i.e., whether the steel coils were "exported to the United States before 12:01 a.m., Aug. 16, 1971." There being no action in this case committed to agency discretion, we do not address a situation in which an action is so committed.

2. Previously shipped—goods that had been exported from a foreign port before 12:01 a.m., August 16.

4. Contracted for—goods that were ordered under contract prior to 12:01 a.m., August 16, but not shipped (exported) prior to that date.

He recommended that, based on equitable considerations, goods previously shipped be exempted while goods ordered under contract but not shipped not be exempted. Subsequently, Secretary Connally approved the recommendation and issued the order that became part of the TSUS.

Counsel for the Government argued before the Customs Court that the applicable standard to qualify for an exemption under the order incorporated into the TSUS was the absence of a contingency of diversion existing at the time the goods left Japan. The Government maintains that appellee must have relinquished sufficient control over disposition of the steel coils to establish a legal obligation to transship the merchandise to the United States at the time it left Japan, i.e., to negate a possibility of diversion from shipment to the United States.

[4] We are not persuaded that the Customs Court erred either by considering that "the proof of intent of the plaintiff (Hugo Stinnes) as an importer and the contingency of a diversion of the merchandise in question are closely related but not separate and individual elements of proof" or by employing this court's definition of "exportation" in *United States* v. *National Sugar Refining Co.*, 39 CCPA 96, C.A.D. 470 (1951). [6] Certainly, it cannot be said that the Customs Court ignored the policy and purpose of the proclamation and order. Concerning appellee's intent to transship, we think that the Customs Court's use of this criterion was consistent with the "equitable considerations" that were the basis for the Secretary's exemption. We cannot agree with the Government that the instant goods, which were shipped from Japan to the United States via Belgium under back-to-back binding contracts (as conceded by the Government in oral argument before this court), are outside the confines of goods "previously shipped * * * from a foreign port * * * but which had not yet arrived in the United States" before 12:01 a.m., August 16, 1971, as indicated in the recommendation and discussion of Assistant Secretary Rossides that was approved by Secretary Connally. In fact, we find the Government's rigid definition of "exported" to be at odds with the intent of

[6] In denying appellee's request for reconsideration, the Acting Commissioner himself considered intent to transship relevant to (but not persuasive of) a legal obligation to transship. We agree with the Customs Court that intent and contingency of diversion are matters governed by the weight and sufficiency of all the evidence.

Further, we find no basis for the Government's contention that, in this case, the intent of the exporter (Koyo Boeki) and the immediate purchaser (Heine Brothers) are controlling. As the Customs Court concluded, the memorandum supporting the Secretary's order was addressed to the importer's intent and shipment from a foreign port before Aug. 16, 1971. As did the lower court, we consider the intent of appellee, the dominant party in these transactions, to be controlling.

the Secretary's order as construed in the light of Assistant Secretary Rossides' memorandum. For the same reasons, we do not find error in the lower court's citation to the *National Sugar* case. [7]

Last, we find no error in the holding of the Customs Court, based on the evidence adduced on motion for summary judgment, that there existed no contingency of diversion sufficient to overcome the evidence of appellee's intent and contractual arrangements to transship the steel coils to Toledo. As the lower court said:

> The evidence appears to clearly establish that at the time the steel was exported from Japan on July 17, 1971, the plaintiff not only had the intention to transship the same to the United States, but had completed bona fide contractual arrangements for the handling and care of the merchandise at Antwerp, Belgium, while awaiting transshipment as well as for the actual sale and disposition of the steel to the ultimate purchaser, Barsteel, at Toledo, Ohio. No credible evidence with respect to the possibility of the diversion of the merchandise in question to a destination other than the United States is contained in the record. Every contractual agreement carries with it the inherent possibility of change, substitution, modification or nonperformance. However, in order to constitute a contingency of diversion sufficient to bear on plaintiff's intent, the possibility of such diversion must have a realistic basis in fact and not mere conjecture.

The Customs Court clearly considered carefully each of the Government's arguments regarding contingency of diversion and found them wanting. We agree fully with the court's analysis and conclusions, and find no persuasive evidence that it erred in determining that appellee's right to inspect to assure contract compliance and ascertain damage and its method of paying La Métallurgie did not constitute an appreciable contingency of diversion.

The judgment of the Customs Court is affirmed.

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[7] The Government's rigidity possibly emanates from its apparent misreading of the intent of Rossides' memorandum. He stated that fairness dictated that the Secretary exempt goods that, although they had not arrived in the United States by the cutoff date, were indeed already destined for a U.S. port under contract. On the other hand, goods not yet shipped from a foreign port were distinguishable. We construe the resulting order to reasonably encompass appellee's goods, which were "previously shipped— * * * exported from a foreign port," Japan, on July 17, 1971, fully a month before the cutoff date of the order. The Government's contention that the surcharge be "difficult to escape" fails to address the considerations of equity that were the raison d'etre of the Secretary's order.

Decisions of the United States Customs Court

United States Customs Court
One Federal Plaza
New York, N.Y. 10007

Chief Judge
Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis
James L. Watson
Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge
Samuel M. Rosenstein

Clerk
Joseph E. Lombardi

Notices

Decision on Motion for Rehearing

MAY 31, 1979

HAWAIIAN MOTOR COMPANY *v.* UNITED STATES, Court No. 75–12–03069.—MECHANICAL EQUIPMENT.—C.D. 4790. Motion by plaintiff denied.

Appeal to U.S. Court of Customs and Patent Appeals

Appeal 79–24.—UNITED STATES *v.* ASG INDUSTRIES, INC., PPG INDUSTRIES, INC., LIBBEY-OWENS-FORD COMPANY, and C E GLASS.—AMERICAN MANUFACTURERS' ACTION—FLOAT GLASS FROM ITALY—BOUNTIES OR GRANTS—COUNTERVAILING DUTIES—SUMMARY JUDGMENT. Appeal from C.D. 4794.

In this case plaintiffs-appellees, American manufacturers and wholesalers of float glass, commence an action in the Customs Court pursuant to the provisions in section 516(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1516(d)), to contest the determination by the Secretary of the Treasury that no bounty or grant was being paid or bestowed, directly or indirectly, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), upon the manufacture or production of float glass from Italy produced by Societa Italiana Vetro, S.p.A. (SIV). The Italian Government bestowed certain pecuniary benefits through regional development programs upon the manufacture or production of float glass in Italy by SIV. The benefits included investment grants, low-interest rate financing, and the reduction of the contribution to state welfare organizations. Defendant-appellant argued that section 303, supra, was intended to reach only those programs which distort international trade and that plaintiffs have failed to demonstrate that the alleged bounties or grants possessed that requisite effect. The Customs Court found that the Italian regional programs resulted in the payment of bounties or grants upon the manufacture or production of float glass in Italy within the contemplation of section 303, supra, and that defendant's argument was lacking in merit. Accordingly, plaintiffs' motion for summary judgment was granted and defendant's cross-motion for summary judgment was denied. The Customs Court ordered "that the Secretary of the Treasury (1) ascertain and determine or estimate the net amount of the bounties or grants paid or bestowed upon the manufacture or production of float glass in Italy by SIV; and (2) direct the appropriate Customs officers throughout the United States to assess countervailing duties thereon, in said net amount equal to the said bounties or grants, entered or withdrawn from warehouse for consumption on or after the day following the date of entry of this order."

It is claimed that the Customs Court erred in failing to grant defendant's motion to dismiss this action due to plaintiffs' failure to exhaust their administrative remedies under sections 516 (a), (b), and (c) of the Tariff Act of 1930, as amended (19 U.S.C. 1516 (a),

(b), and (c)); in failing to grant defendant's motion for summary judgment; in granting summary judgment to plaintiffs; in finding and holding that the Secretary of the Treasury's determination of March 8, 1977, 42 F.R. 13016–17, in this case was erroneous; in finding and holding that the benefits bestowed by the Italian Government upon manufacture or production of float glass in Italy by SIV are countervailable bounties or grants within the ambit of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303); in not finding and holding that "publication" as used in section 516(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1516(g)), means publication by the Secretary of the Treasury in the CUSTOMS BULLETIN; in failing to stay proceedings in this action in order to allow the Secretary to consider the matter anew and make a new determination using the relevant and proper factors in the event the Secretary's decision was erroneous.

ERRATUM

In CUSTOMS BULLETIN, vol. 13, No. 17, dated April 25, 1979, C.D. 4793 on page 74, the 11th line of the 2d paragraph should read:

obligations to the agency, such are entitled to assume that

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of
CERTAIN ELECTRIC SLOW COOKERS } Investigation No. 337–TA–42

Notice of the Commission Procedure on the Presiding Officer's Recommended Determination, Relief, Bonding, and the Public Interest, and of the Schedule for Filing Written Submissions

Recommendation of "violation" issued.—In connection with this investigation by the U.S. International Trade Commission under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), of alleged unfair methods of competition and unfair acts in the importation and sale of certain electric slow cookers in the United States, the presiding officer recommended on May 9, 1979, that the Commission—

(1) Grant the joint motion for summary determination and
(2) Determine that there is a violation of section 337.

The presiding officer certified to the Commission for its consideration the evidentiary record, which had been augmented pursuant to the Commission's order to remand of February 9, 1979. Interested persons may obtain copies of the presiding officer's recommended determination of May 9, 1979 (and all other public documents), by contacting the office of the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161.

Requests for oral argument and oral presentation.—At present, no oral argument is planned with respect to the recommended determination of the presiding officer. Similarly, no oral presentation is planned with respect to the subject matter of section 210.14(a) of the Commission's "Rules of Practice and Procedure" (19 CFR 210.14(a)) concerning relief, bonding, and the public-interest factors set forth in section 337 (d), (f), and (g)(3) of the Tariff Act of 1930, as amended, which the Commission is to consider in the event it determines that there should be relief. However, the Commission will consider written requests for an oral argument or an oral presentation if they are received by the Secretary to the Commission no later than the close of business (5:15 p.m., e.d.t.), on June 28, 1979.

Written submissions to the Commission.—The Commission requests that written submissions of three types be filed no later than the close of business on June 28, 1979:

1. *Briefs on the presiding officer's recommended determination.*—Parties to the Commission's investigation, interested agencies, and the Commission investigative staff are encouraged to file briefs concerning exceptions to the presiding officer's recommended determination. Briefs must be served on all parties of record to the Commission's investigation on or before the date they are filed with the Secretary. Statements made in briefs should be supported by references to the record. Persons with the same positions are encouraged to consolidate their briefs, if possible.

2. *Written comments and information concerning relief, bonding, and the public interest.*—Parties to the Commission's investigation, interested agencies, public-interest groups, and any other interested members of the public are encouraged to file written comments and information concerning relief, bonding, and the public interest. These submissions should include a proposed remedy, a proposed determination of bonding, and a discussion of the effect of the proposals on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. These written submissions will be very useful to the Commission if it determines that there is a violation of section 337 and that relief should be granted.

3. *Requests for oral argument and oral presentation.*—Written requests that the Commission hold oral argument and/or oral presentation must be filed with the Secretary to the Commission as described above.

Additional information.—The original and 19 true copies of all briefs, written comments, and any written request must be filed with the Secretary to the Commission.

Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request in camera treatment.

Such request should be directed to the Chairman of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. The Commission will either accept such submission in confidence or return it. All nonconfidential written submissions will be open to public inspection at the Secretary's office.

Notice of the Commission's investigation was published in the Federal Register of February 9, 1978 (43 F.R. 5590).

By order of the Commission.

Issued: June 6, 1979.

KENNETH R. MASON,
Secretary.

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U.S. Customs Service

Court of Customs and Patent Appeals

Customs Court

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

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